

HUMAN SERVICES

DIVISION OF MENTAL HEALTH SERVICES

Psychiatric Community Residences for Youth

Proposed Readoption with Amendments: N.J.A.C. 10:37B

Authorized By: Gwendolyn L. Harris, Commissioner

Department of Human Services

Authority: N.J.S.A. 30:11B-4

Calendar Reference: See Summary below for explanation of exception to
calendar requirement.

Proposed Readoption: PRN 2004-98

Submit comments by June 4, 2004 to:

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Legal Liaison

Division of Mental Health Services

P.O. Box 727

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The agency proposal follows:

Summary

Pursuant to N.J.S.A. 52:14B-5.1(a), N.J.A.C. 10:37B, Psychiatric Community Residences for Youth, is scheduled to expire on April 22, 2004. Because this notice was filed with the Office of Administrative Law prior to the

expiration date, that date was extended 180 days to October 19, 2004, in accordance with N.J.S.A. 52:14B-5.1(c). In order to avoid expiration and extend the effectiveness of the current rule while more extensive amendments are completed, the Department is proposing, at this time, to readopt these rules with only one change affecting several provisions – that is, the replacement of the term “Division of Mental Health Services” with “Department of Human Services” or “Department.” This change reflects the recent transfer of licensing authority from the Division to the Department. Consistent with this transfer of authority, an address change appears at N.J.A.C. 10:37B-2.5(a), directing providers to submit any waiver requests to the Department’s address, rather than to the Division’s. Provisions concerning contract or funding activities maintain their references to the Division, as those functions will continue to be performed by the Division.

Further amendments are currently being developed in accord with the Partnership for Children directions regarding practice model, expanded referral pathways, enrollment, and reporting mechanisms. The Department will include interested stakeholders (including provider agencies, family members and caregivers) to develop these substantive amendments.

These rules establish operational standards for licensure by the Department, pursuant to N.J.S.A. 30:11B-1 et seq., of psychiatric community residences for youth. These rules are intended to ensure the delivery of appropriate mental health and support services for youth at risk of out-of-home

services, hospitalization or recently discharged from inpatient care but not ready to return home or reside in a less intensive facility. These residences provide clinical, therapeutic and support services, food, and shelter on a 24 hour basis under such supervision as required to not more than 15 youth with serious emotional and behavioral disturbances who require assistance.

The purpose of these rules is to: (1) enable licensure and regulation of specialized community residences for youth with serious emotional and behavioral disturbances; (2) promote the goal of the residences to provide appropriate mental health and support services and out-of-home services to children and adolescents at risk of hospitalization or who are recently discharged from inpatient care but are not ready to return home or reside in a less intensive facility; and (3) promote high quality and effective delivery of funded out-of-home services for youth.

Subchapter 1 contains general provisions, that is, the purpose and scope of the chapter and the definitions of words and terms used in the chapter.

Subchapter 2 concerns licensure, including the licensure application requirements, the required inspections by the Division, the terms of provisional licenses, the applicability of these rules to programs currently under contract with the Division, the availability of waivers to these rules, the terms for license renewal, the required quality assurance activities for monitoring compliance with

these rules, procedures to appeal findings by the Department, administrative sanctions available to the Department and the authority of the Department to respond to emergency situations affecting the welfare of residents.

Subchapter 3 contains the standards for the administration of psychiatric community residences for youth, including requirements regarding a written statement of purpose, incorporation by reference of management standards, establishment of rights of residents, information to be provided to parents, legal guardians and staff members and establishment of policies and procedures which promote good community relations.

Subchapter 4 contains program requirements, including the establishment of affiliation agreements with other child-serving agencies, the development of written admission criteria, the development of procedures to ensure that appropriate admission information is obtained on each admitted youth, establishment of specific admission practices, the development, implementation and maintenance on file of written treatment plans for each youth by treatment teams, the provision of appropriate treatment services, the establishment of requirements and the development of policies and procedures regarding behavior management practices, point systems, "time-out" practices, therapeutic holds and behavioral management, if utilized, a prohibition regarding the use of mechanical restraints, and the development of house rules of conduct and rights of the residents.

Subchapter 5 contains health and physical environment requirements, including implementation of a comprehensive health plan for residents, provision of a medical examination for each admission, establishment of sound general medical practices, establishment of policies and procedures regarding the administration of medication other than psychotropic medication, the provision of adequate food and nutrition for residents and the establishment of health and physical care education for residents.

Subchapter 6 contains the education requirements, that is, enrollment of each resident in an appropriate educational program and coordination with the student's educational program. Subchapter 6 also references appropriate education law and rules.

Subchapter 7 contains the requirements for staff at the facilities, including minimum staffing requirements, the responsibilities and qualifications for a program director-supervisor, clinical social worker-therapist, direct care paraprofessional workers, nurse-health educators and staff psychiatrists, policies regarding the use of volunteers and student interns, and the development of a staff training plan.

As the Department has provided a 60-day comment period for this notice of proposal, it is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

Social Impact

The services regulated by this chapter provide a benefit to the youth who are in need of psychiatric services, and to their families. Youth can be served in the facilities as an intermediate step between hospitalization and placement at home. The existence of the psychiatric services can prevent hospitalization, shorten the length of hospitalization when it does occur, and make transitions back into the community from hospitalization as seamless as possible. The standards contained in the rules protect the welfare of youth who need psychiatric community residences, and assure that they receive services which meet their individual needs. Provider agencies will receive the benefit of the existence of uniform standards, which were originally developed with significant input from staff of the Division, Department, providers, stakeholders, family members, and caregivers. The Division will benefit from the efficiencies which result from the application of uniform standards in the licensure process.

Economic Impact

These rules will positively economically affect clients of these residences and their families by making available high quality residential services for youth at costs commensurate with the ability of clients or their families to pay for these services. The rules also positively impact both state and local/county

government by promoting the efficient and effective expenditure of State funding by provider agencies.

Provider agencies receive State funding to provide the services in compliance with these rules. Since the last promulgation of N.J.A.C. 10:37B, the Department has adopted licensure fees for providers of these services, pursuant to legislative authorization (see N.J.S.A. 30:9A-10 and 21, P.L. 2003, c.122, and N.J.S.A. 30:9A-19, as amended by P.L. 2003, c. 117). The fee structure was developed with consideration of its impact on providers of varying sizes. Although these fees will have an economic impact on providers, the assessment of fees is a fair and equitable means of ensuring the delivery of high-quality mental health services to clients.

Federal Standards Statement

A Federal standards analysis is not required because the rules proposed for readoption with amendments are not subject to any Federal requirements or standards.

Jobs Impact

The rules proposed for readoption with amendments are not expected to create jobs or cause loss of jobs in the community or with the State.

Agriculture Industry Impact

The rules proposed for readoption with amendments are not expected to have an impact on the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

Some agencies providing residential services to youth with serious emotional disturbance, as described in the Summary and Social Impact statements, may be small businesses, as that term is defined under the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The rules govern Division-funded psychiatric community residences for youth and set forth the reporting, recordkeeping and compliance requirements imposed on providers necessary for the efficient operation of the program. Reporting, recordkeeping and other requirements involve the provision of a comprehensive range of program requirements, including: maintaining a written statement of purpose (N.J.A.C. 10:37B-3.1); posting of client's rights (N.J.A.C. 10:37B-3.3); communicating information to parents (N.J.A.C. 10:37B-3.4); negotiating affiliation agreements with other agencies (N.J.A.C. 10:37B-4.1); developing admission criteria (N.J.A.C. 10:37B-4.2); gathering admission information (N.J.A.C. 10:37B-4.3); maintaining individual client treatment plans (N.J.A.C. 10:37B-4.6); documenting the operations of various treatment techniques (N.J.A.C. 10:37B-4.7);

implementing a health plan (N.J.A.C. 10:37B-5.1); developing written health care policies and procedures (N.J.A.C. 10:37B-5.6); complying with staffing responsibilities and qualifications (N.J.A.C. 10:37B-7 and N.J.A.C. 10:37H-5.4(b)); developing and maintaining menus (N.J.A.C. 10:37H-5.5(a)3); developing policies and procedures relating to clients' education (N.J.A.C. 10:37B-6.1(c)and(d) and N.J.A.C. 10:37B-6.2(a)); completing intake assessments (N.J.A.C. 10:37B-7.3(a)2); gathering and assessing case information from the Children's Crisis Intervention Service (N.J.A.C. 10:37B-7.3(a)); and documenting social assessments, family assessments, and other pertinent case information (N.J.A.C. 10:37B-7.3(a)5).

These rules establish no need for operators of these programs to employ outside professional services to comply with the provisions, nor is there any requirement for providers to expend capital costs to comply with the rules. The reporting, recordkeeping and other compliance requirements imposed upon such agencies must be uniformly applied, regardless of the size of the agency, to ensure that youth with serious emotional disturbance receiving these services throughout the State do so in accordance with basic minimum standards of quality and effectiveness. These standards are important because the youth being served are typically currently receiving inpatient services in psychiatric hospitals, are in need of services which will further stabilize their condition so that they may return home, or are at risk from removal from their homes.

Smart Growth Impact

The Department anticipates that the rules proposed for readoption with amendments will have no impact on smart growth in New Jersey or in the implementation of the New Jersey State Development and Redevelopment Plan.

Full text of the proposed readoption may be found in the New Jersey Administrative Code at N.J.A.C. 10:37B.

Full text of the proposed amendments follows (additions indicated in boldface thus; deletions indicated in brackets [thus]):

SUBCHAPTER 1. GENERAL PROVISIONS

10:37B-1.1 Scope and purpose

(a) The rules in this chapter apply to all licensed psychiatric community residences for youth funded by or under contract with the Division of Mental Health Services.

(b) (No change.)

SUBCHAPTER 2. LICENSING

10:37B-2.1 Initial licensing process

(a) All inquiries related to licensure of psychiatric community residences for youth shall be made to:

[New Jersey Division of Mental Health and Hospitals] Department of Human
Services

Office of Licensing, Mental Health Licensing

[CN] P.O. Box 727

Trenton, NJ 08625-0727

(b) – (c) (No change.)

(d) The PA shall apply for licensure to the [Division] Department. Applications shall indicate the type or types of community residences intended, the specific geographical location in which residences would be located, and the number of residents to be served. Such application shall be made to the [Division] Department at the address in (a) above.

10:37B-2.3 Licensing of psychiatric community residences for youth
programs

(a) The [Division] Department shall inspect any proposed psychiatric community residence for youth site, utilizing the physical and fire safety standards pursuant to N.J.A.C. 10:128-4.1 and 10:128-4.4 through 4.6, and shall review all program operations or descriptions for compliance with the provisions of this chapter.

(b) The [Division] Department shall notify the PA in writing of any violations.

(c) – (d) (No change.)

(e) The license shall be issued by the Department [through the Division].

(f) (No change.)

(g) The license shall be available during normal business hours on the agency's premises for review by the [Division] Department or any interested members of the public.

10:37B-2.4 Provisional license

(a) A provisional license may be issued by the Department to a prospective PA which expresses interest in operating a community residence, indicates in writing an intent to comply with the guidelines contained in this chapter and applies to the [Division] Department for such provisional licensing. The application shall indicate the type or types of community residences desired, the specific geographical areas in which residences would be located, and the number of residents to be served.

(b) The [Division] Department shall review the application of the prospective PA, assess the fiscal, programmatic, and administrative capabilities of the PA and determine whether a provisional license shall be issued. There shall be no fee charged for the issuance of a provisional license.

(c) – (d) (No change.)

(e) The provisional license shall be issued for a time period not to exceed six months and may be renewed in six months intervals by the [Division] Department if, in its judgment, the PA consistently made good faith efforts to establish the proposed residence(s).

(f) (No change.)

10:37B-2.5 Applicability of standards

(a) All PAs which are funded by, or have contracts with, the Division prior to May 2, 1994 and all community residences in operation prior to May 2, 1994 shall be considered approved for licensing and shall not be subject to the initial or provisional licensing process. From May 2, 1994 on, licensure shall be based on the [Division's] Department's annual inspection.

(b) (No change.)

10:37B-2.6 Waiver of standards

(a) Requests for waivers shall be made to the [Division] Department in writing with supporting information justifying the request. Waiver requests shall be submitted to the address listed in N.J.A.C. 10:37B-2.1(a).

(b) Waivers of specific standards shall be considered at the discretion of the [Division] Department, provided that one or more of the following conditions have been met:

1. – 3. (No change.)

10:37B-2.7 License renewal

(a) (No change.)

(b) Determination of license renewal shall be based on the annual evaluation conducted by the [Division's Bureau of Licensing and Inspections] Department's Office of Licensing, Mental Health Licensing.

(c) The Director of the [Division] Office of Licensing, Mental Health Licensing (or designee) shall make the determination of renewal.

(d) - (e) (No change.)

10:37B-2.8 Monitoring compliance

(a) The PA shall ensure, through its quality assurance program, that residences meet the program and facilities requirements for licensure set forth in this chapter. Quality assurance visits to ensure health, safety, and welfare standards shall be conducted by the PA quarterly, at a minimum. The [Division] Department will audit the process annually.

(b) All PAs and residences shall be evaluated on site for program requirements annually by the [Bureau of Licensing and Inspections] Office of Licensing, Mental Health Licensing, and, at the discretion of the [Division] Department, as needed.

(c) (No change.)

(d) No later than 40 days after receipt of the report, the PA shall provide written notice to the [Division] Department that specific violations have been corrected, and that actions have been taken to abate specific violations noted and that full correction is anticipated within the time frames noted in the report.

(e) For any violations cited by the [Division] Department as life-threatening, meaning presenting an imminent threat to the health and safety of residents, the PA shall correct them and remove the threat created by such deficiencies immediately and shall provide written notice, within 48 hours, to the [Bureau of

Licensing and Inspections] Office of Licensing, Mental Health Licensing that such action has been taken.

(f) If the [Division] Department report identifies violations which are not life-threatening, representatives from the [Division] Department, as part of their ongoing monitoring responsibilities, shall visit the specified residence or program and provide a report to the [Division] Department on progress toward remediation of deficiencies every 60 days until compliance is achieved.

(g) (No change.)

10:37B-2.9 Appeal of the [Division's] Department findings

(a) The PA may appeal findings of the [Division] Department, with the exception of life-threatening violations.

(b) The appeal of findings shall be directed to the director of the [Division] Office of Licensing, Mental Health Licensing (or designee) within 20 days of the PA's receipt of the written report of findings.

(c) (No change.)

10:37B-2.10 Administrative sanction

(a) In the event that the PA does not submit the written notice specified in N.J.A.C. 10:39-3.1(c) by the required date, or if violations have not been abated within time frames specified in the report, the [Division] Department shall have the option of suspension of payments to which the PA may be entitled under any agreements with the Division, imposition of a moratorium on admissions to the

facility, revocation of the current license to operate the facility, non-renewal of the license to operate the facility, or imposition of other administrative sanction(s) appropriate to the violations cited.

(b) In the event that the [Division] Department requires the revocation or non-renewal of the license and the relocation of the residents of the facility, a written order shall be directed to the PA's executive director (or designee) and to the President of the Board of Directors of the agency.

(c) When an order to vacate the premises and the revocation of a license has been issued by the [Division] Department, the Department shall work with the PA to ensure proper placement of residents.

10:37B-2.11 Review of administrative sanctions

Where an administrative sanction exists and the PA denies the basis of the sanction, the PA may apply to the director of the [Division] Office of Licensing, Mental Health Licensing (or designee) for a review, which shall be afforded and a decision rendered by the director of the [Division] Office of Licensing, Mental Health Licensing (or designee) within five working days of the receipt of the written request for a review.

10:37B-2.13 Emergency situation

The [Division] Department, when it determines that the health, safety or welfare of the residents warrant it, may immediately suspend a PA license, and take the

necessary action to ensure the well-being of residents. Any hearing provided in such cases shall be on an expedited basis.

SUBCHAPTER 3. ADMINISTRATION

10:37B-3.4 Information to be provided to parent, legal guardians and staff members

(a) The residence shall provide and explain to every parent, within five working days of his or her youth's placement, and to every person upon becoming a staff member, including the provision, by appropriate means, to individuals whose primary language is not English or who have a communication handicap, a written document indicating that the residence is required to:

1-3. (No change.)

4. Indicate how parents or legal guardians may secure a copy of this chapter by contacting the [Office of Children's Services, Division of Mental Health and Hospitals, CN 727,] Department of Human Services, Office Licensing, Mental Health Licensing, P.O. Box 727, Trenton, New Jersey 08625-0727;

5-13. (No change.)

(b) (No change.)

SUBCHAPTER 4. PROGRAM REQUIREMENTS

10:37B-4.1 Affiliation agreements

Each agency operating a residence shall negotiate affiliation agreements with child-serving agencies and providers. This shall include, but not be limited to, CCIS, children's partial care programs, and other inpatient psychiatric facilities approved for referral by the [Division] Department.

10:37B-4.2 Criteria for admission

(a) (No change.)

(b) Except as approved in writing by the [Division] Department, in accordance with N.J.A.C. 10:37B-2.5, admission policies of the PA shall restrict admissions to youth who have received acute inpatient care in an inpatient facility and require psychiatric treatment in a community residence setting prior to returning home or placement in a longer term residential facility, or youth who may be at risk for receiving acute inpatient care.

(c) (No change.)